very recent, and the circumstances connected with it shew that it was not very fully considered. Again, where doubts are entertained by one or more of the Judges who had taken part in such decision; and thirdly, though more rarely, where there is a concurrence of opinion, outside the members of the Court so constituted, to the effect that the decision was one which could not be supported..."

I think the above considerations apply to this case and I therefore quash the conviction and order the fine to be returned. The order of disqualification has already been set aside.

J. H. A. TROWELL v. P. P.

[App. Crim. Juris. (Horne, J.) April 30, 1941]

Evidence — Criminal Law — Corroboration of accomplice evidence — Position where judge is sitting without a jury.

The appellant was convicted in the Magistrate's Court at Batu Gajah of receiving illegal gratification in the course of his duty as Inspector of Machinery in the Mines Department. The evidence against the appellant was twofold (a) the oral evidence in Court of accomplices (b) certain entries in account books made by accomplices or their clerks.

Held, that the Magistrate had not fully appreciated the danger of convicting on the uncorroborated evidence of accomplices, that he had not distinguished between witnesses who were and those who were not accomplices, and that he had regarded matters as corroborative which were not corroborative in the legal meaning of that term. On all these grounds, the conviction must be quashed.

Cases referred to:—

(1) *R. v. Beebe* (1925) 19 Cr. App. Rep. 22.

(2) *R. v. Ambler* (1938) 2 W.W.R. 225.

(3) *R. v. Baskerville* (1916) 2 K.B. 658.

(4) *R. v. Charavanmuttu* (1930) 22 C.A.R. 1.

(5) *R. v. Koh Soon Poh* (1935) S.S.L.R. 30; (1935) 4 M.L.J. 120.

C. D. D. Hogan (*Lewis* with him) for appellant.

T. T. Russell, Deputy Public Prosecutor, for Public Prosecutor.

Horne, J.—It is beyond question that the appellant in the course of his duty as Inspector of Machinery attended at the mines referred to in each charge on the day alleged and that on each of those days he received a sum of money in cash. At the Mines Office it is clear that the statutory fee only was in each case paid in; while according to the account books a greater sum is paid out, and is booked to "the inspection" or "to inspection plus tea money". The entries themselves do not indicate the person who received the excess. The only evidence that the appellant received it is that of the person who alleges he paid it. But that person is in each case an abettor on his own confession and therefore an accomplice. The bank account is a joint account of appellant and his wife and as the evidence about it stood at the trial, it cannot even be said to establish more than the fact that money was paid in. The effective evidence on each charge is therefore the allegation by the giver of the alleged present supported by evidence of opportunity to give it; against which there is the denial on oath of the appellant. There is evidence of other partners, but the admissible part thereof shows them to be accomplices, and at the most is only a repetition of the entry in the account books.

The Magistrate, however, considered the evidence "overwhelming" and generally expresses himself throughout his Grounds of Judgment in such extravagant terms that I think he would not have convicted on the evidence of the Chinese witnesses which he describes as "so convincing and so obviously the truth" had he not been of opinion that they were corroborated. Unfortunately he does not state which witnesses he regarded as accomplices but lumps them all together, and it may be as Mr. Hogan now submits that he has used the evidence on the three charges as mutually corroborative. He was addressed by both Counsel at the conclusion of the evidence, but the strongest expression as to the danger of convicting I can find in his note of their addresses is that which appears in the address of the appellant's Counsel — "I stress the need for corroboration"; and the grounds of decision, adopting the same phrase, states — "I carefully directed my mind to the question of the need for corroboration". Can it be said that the Magistrate directed himself that it is always dangerous to convict on uncorroborated evidence (*Rex v. Beebe,*[1])? There are ample references in English and Indian reports as to the warning to be given by a Judge to a jury in this class of case but it is difficult to find an authoritative statement of the rule of practice which is virtually a rule of law (9 Hailsham 309) in reference to a tribunal consisting of a single person. There is one, however, in a Canadian case, a Court of Appeal decision, *Rex v. Ambler,*[2] and a summary of the judgment is in the English and Empire 1940 Digest Supplement, page 48, which is as follows:—

"In all cases wherein corroborative evidence of the description dealt with in Rex v. Baskerville, (1916) 2

K.B. 658, is required and the trial is by a Judge sitting without a jury, a conviction made on the uncorroborated evidence of an accomplice, without an accompanying statement being made by the Judge showing that he convicted with an appreciation of the danger of so doing, should be set aside. If he sees fit to convict in the face of the admonition of Courts past and present as to the danger of convicting upon the uncorroborated evidence of an accomplice he is at liberty to do so and his conviction will stand, provided he shows that the danger of so doing is present to his mind and the judgment is not otherwise objectionable. There may be a case in which a trial Judge may fittingly convict upon the uncorroborated evidence of an accomplice, but this would be the very exceptional case."

I do not think the Magistrate's grounds of decision show that he "convicted with an appreciation of the danger of so doing". The arguments of Counsel before him were directed also to whether the entries in the account books were corroboration, the Assistant Legal Adviser submitting they were and Mr. Lewis submitting they were not. Although section 157 of the Evidence Enactment renders such entries admissible "to corroborate the testimony of the witness", when admitted they only shew that the witness is consistent and do not amount to the kind of corroborative evidence which is required when an accomplice becomes a witness for the prosecution. In *Rex v. Baskerville,*[3] a Court of five Judges held "that evidence in corroboration must be *independent* testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.... Corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused." This passage is cited with approval in *Rex v. Charavanmuttu*[4] and see Hailsham volume 9, paragraph 311.

Mr. Russell in support of the conviction submitted that *Rex. v. Koh Soon Poh,*[5] binds this Court and the Magistrate to accept the entries in the books as corroboration of the kind required by the decision in *Rex v. Baskerville.* It will be noted that in that case *Rex v. Baskerville* is not referred to at all and that after pointing out the difference between the English law and the Evidence Enactment as to further statements made by witnesses at or about the time of the occurrence the subject of their testimony, the Court accepted the entries in the book in question in that case "as corroborating the accomplice's *verbal* testimony", and, I would add, not as evidence of the facts stated in the entries. In my view this case has not altered the law in any way.

It would therefore appear that the Magistrate has regarded matters as corroborative which were not corroborative in the meaning used in *Rex v. Baskerville;* he has not given himself a proper warning of the danger and has not distinguished between witnesses who are and those who are not accomplices. There are also some minor objections: he has admitted evidence of an alleged general practice to make gifts to Inspectors and of an alleged payment other than the one charged. The latter evidence was objected to and the objection was apparently overruled.

It is also on record that one of these Chinese witnesses, and one clearly an accomplice, admitted knowing that "Chinese miners had been circulated asking them to give information to the police before a certain date under penalty of prosecution." An accomplice who admits he is giving evidence under this sort of compulsion can hardly be the sort of witness who is safe to rely upon without corroboration.

As there is in this case no corroboration I think on an examination of all the evidence and having regard to the above matters that I am bound to quash this conviction. I order a verdict of acquittal to be entered and the appellant and his sureties to be discharged from their bonds.

Conviction quashed.

IN RE THE ESTATE OF PALANIAPPA CHETTIAR.

[App. Civil Juris. (Terrell, Ag. C.J. F.M.S., McElwaine, C.J. S.S. and Aitken, Ag. J.A.) June 7, 1941]

Estate Duty Enactment (Cap. 136), section 17, section 38 — Debt out of jurisdiction — Section 38: Leave to appeal.

Case stated under section 38 of the Estate Duty Enactment (Cap. 136).

Palaniappa Chettiar died domiciled in India. He was the sole owner of a money-lending business carried on in the Federated Malay States. This business owed a debt to another firm carrying on a money-lending business at the same place but owned by an individual Ramanathan Chettiar who had never resided in the Federated Malay States. Both the businesses were carried on by agents.

Held, by the Court of Appeal, reversing the decision of Gordon-Smith, J.: A debt due by deceased to a firm carrying on business in the Federated Malay States but owned by an individual never resident in the Federated Malay States is debt due to a person resident out of the Federated Malay States.